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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

JAMES C. TAYLOR, JR.,

Plaintiff and Appellant,

v.

ROBERT BAZIKYAN,

Defendant and Respondent.

B210762

(Los Angeles County
Super. Ct. No. MC019163)

APPEAL from a judgment of the Superior Court of Los Angeles County. Randy Rhodes, Judge. Affirmed.

James C. Taylor, Jr., in pro. per., for Plaintiff and Appellant.

Fonda & Fraser, Todd E. Croutch and Daniel K. Dik for Defendant and Respondent.

In underlying litigation, respondent Robert Bazikyan, attorney for the defendant, declared in a court filing that the plaintiff, appellant James Taylor, was a vexatious litigant. Taylor then filed this defamation action against Bazikyan. Bazikyan demurred on the ground that statements in his declaration were privileged. The trial court sustained the demurrer without leave to amend. We affirm.

BACKGROUND

Taylor filed a lawsuit against Jacobs Sverdrup Contractors (Jacobs). Bazikyan, as attorney for Jacobs, filed a defense motion for security of costs on the ground that Taylor was a vexatious litigant within the meaning of Code of Civil Procedure section 391.1. Bazikyan supported the motion with his own declaration, in which he stated, “The plaintiff, James C. Taylor, Jr., has commenced in propria persona at least five (5) cases in the immediately preceding seven year period which have been finally adversely determined. All five of these cases have been dismissed . . . within the state and federal courts of California.” The declaration bore a footer containing the title of the motion: “Motion for Security of Costs Alleging Plaintiff is a Vexatious Litigant.”

Taylor sued Bazikyan, alleging Bazikyan’s statement that he was a vexatious litigant defamed him. Bazikyan demurred on two grounds: (1) the phrase “vexatious litigant” did not appear in the declaration; and (2) statements in the declaration were absolutely privileged under subdivision (b)(2) of Civil Code section 47. The trial court sustained Bazikyan’s demurrer without leave to amend on the second ground, finding the statement to be absolutely privileged. Taylor appeals from the resulting judgment of dismissal.

DISCUSSION

A. Standard of Review

When reviewing the ruling on a demurrer, “we are guided by long-settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. . . .’” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, citation omitted.) “When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment; if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm.” (*Ibid.*)

B. Bazikyan’s Declaration Was Absolutely Privileged

Taylor alleged one cause of action for libel. “Libel is a false and unprivileged publication by writing” (Civ. Code, § 45.) Subdivision (b) of Civil Code section 47 provides that a communication made in any judicial proceeding is privileged. The privilege excludes liability notwithstanding falsity (*Freeman v. Mills* (1950) 97 Cal.App.2d 161, 166) or malice (*Bisno v. Douglas Emmett Realty Fund* 1988 (2009) 174 Cal.App.4th 1534, 1550). A declaration filed in court to achieve an objective of litigation, and logically related to that objective, constitutes a communication made in a judicial proceeding. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057; *Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1431.)

Bazikyan’s declaration supported a motion to obtain security from an allegedly vexatious litigant. The declaration was expressly authorized by Code of Civil Procedure section 391.1, which requires that a motion for an order requiring security be “supported

by a showing.”¹ The declaration was therefore filed to achieve a litigation objective and was logically related to that objective. It was absolutely privileged.

Citing *Brewer v. Second Baptist Church* (1948) 32 Cal.2d 791 and *Di Giorgio Fruit Corp. v. American Federation of Labor and Congress of Industrial Organizations* (1963) 215 Cal.App.2d 560, Taylor argues that because Bazikyan knowingly and maliciously made false statements designed to prevent the underlying litigation from going to trial, only a qualified privilege applies. The argument is meritless. Preventing litigation from going to trial is a legitimate defense objective. (See *Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 220 [“Vexatious litigant statutes were created ‘to curb misuse of the court system’”].) An in-court communication made to achieve a litigation objective is absolutely privileged. (*Rusheen v. Cohen, supra*, 37 Cal.4th at p. 1057.) *Brewer v. Second Baptist Church*, where the allegedly defamatory communication was made in a church meeting, and *Di Giorgio Fruit Corp. v. American Federation of Labor and Congress of Industrial Organizations*, where the communication was made in a film shown to agricultural workers, are inapposite because neither involved a proceeding that would give rise to an absolute privilege. (Compare subd. (b) of Civ. Code § 47 [communications in legislative, judicial, mandamus or other official proceedings absolutely privileged] with subd. (c) [communications between interested persons privileged if made without malice].)

The demurrer was properly sustained.

Given this ruling, the court need not address Bazikyan’s argument on appeal that his declaration does not contain the phrase “vexatious litigant.” At any rate, the argument is without merit, as Bazikyan unambiguously characterized Taylor as a vexatious litigant.

¹ Code of Civil Procedure section 391.1 provides in full as follows: “In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant.”

C. Leave to Amend was Properly Denied

Nothing adduced by Taylor or appearing in the record suggests he can cure the pleading defect. Therefore, the trial court properly denied leave to amend.

DISPOSITION

The judgment is affirmed.

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CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.